IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of	Docket No.: P26871
W. BLACKWELL, *et al.*	Confirmation No.: 9978
Serial No.: 10/602,711	Group Art Unit: No. 3652
Filed: June 25, 2003	Examiner: G. W. Adams

For: **METHOD AND APPARATUS TO EFFECTUATE AUTOMATED POSITIONING AND LOADING OF VARIABLE SIZED CONTAINERS**

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This request is being filed concurrently with a Notice of Appeal and is responsive to the Final Official Action of September 20, 2006. Reconsideration and withdrawal of the asserted rejections is respectfully requested in view of the following remarks.

A prima facie case of indefiniteness has not been set forth and the Rejection Under 35 U.S.C. § 112, 2nd paragraph is improper.

A prima facie case of anticipation has not been set forth and the Rejection Under 35 U.S.C. § 102(b) is improper.

A prima facie case of unpatentability has not been set forth and the Rejection Under 35 U.S.C. § 103(a) is improper

Examiner's Assertion

The Examiner asserts that claim 2 is indefinite because it is not clear whether "the mail objects are being loaded into a bucket assembly or a container which is supported by a bucket assembly."

Applicant's Response

Applicant respectfully disagrees. Applicant submits that one having ordinary skill in the art having read the specification (in particular paragraphs [0026] and [0027] of the instant US patent application publication No. 2004/0265101) would clearly recognize

that the bucket assembly has the ability (via sensors 120A) to detect whether any number or type of containers are properly positioned in the bucket assembly and also has the ability to determine filling capacity (via e.g., sensors 120C) of both the bucket assembly and a container positioned in the bucket assembly. Claim 2 recites the feature that the sensor 120A detects whether any number or type of containers are properly positioned in the bucket assembly. This feature is clearly disclosed on lines 6-10 of paragraph [0026] of the instant US patent application publication No. 2004/0265101.

The Examiner expresses concern that the sensors of the bucket assembly cannot be capable of determining the fill capacity of a container arranged within the bucket assembly. Applicant submits that one having ordinary skill in the art having read the specification and drawings would clearly recognize the various ways that this can occur. For example, it is well known to make the containers of a transparent plastic or with handles which are openings in the sides of the containers; both configurations allows the sensors to determine a fill capacity of the container. A container made of a transparent or translucent material is shown in Fig. 7 of the instant application. It is also possible to place the sensors at a height of a container in order to determine fill capacity of the container.

Examiner's Assertion

The Examiner asserts that independent claims 1, 17, 21 and 25 are anticipated by WILDE.

Applicant's Response

Applicant respectfully disagrees. WILDE fails to teach each and every element of at leas these claims.

Independent claim 1 recites, *inter alia,*

> at least one sensor which detects whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position.

Additionally, independent claim 17 recites, *inter alia,*

> at least one sensor which detects whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the another tilt position.

Furthermore, independent claim 21 recites, *inter alia,*

detecting when the container is full at the first tilt position;
indexing the container to an intermediate tilt position to enable settling of contents within the container; and
detecting when the container is full at the intermediate tilt position.

Finally, independent claim 25 recites, *inter alia*,

a module which detects when a container is full at a first tilt position, an intermediate tilt position and an upright position;
a module which detects a position of the container; and
a module which controls a movement of the container based at least on a capacity of the container.

Applicant acknowledges, for example, that WILDE teaches a container filling apparatus which utilizes a container support 14 and container that can be loaded with parts (see col. 6, lines 33-52). Applicant also acknowledges that WILDE discloses the use of a sensor 130 and limit switches 156 and 158 (see col. 6, lines 8-32). However, contrary to the Examiner's assertions, the so-called sensors 130 and 156 do not detect whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position, for example.

The Examiner is respectfully directed to col. 6, line 33 to col. 7, line 26 of WILDE which specifically explains that the initial movement of the container support 14 is controlled by an operator. Thereafter, the filling takes place under the influence of the back-up sensor which detects back-up of the parts on the discharge end 75 of a discharge section 18. Such language is hardly suggestive of detecting when a container or bucket assembly is full at each of a first tilt position, an intermediate tilt position and an upright position, or of a module which detects a position of the container, or even of a module which controls a movement of the container based at least on a capacity of the container.

Examiner's Assertion

On page 6 of the Final Office Action, the Examiner explains that the so-called "sensors 130, 156 detect fill capacity by warning that there is an amount within a container that will cause a backup".

Applicant's Response

This assertion is without prior art support, ignores the clear language of the claims, and is, in fact, contradicted by the clear disclosure of WILDE. The so-called sensors 130 and 156 in WILDE simply do not detect whether the bucket assembly has

reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position, for example. To the contrary, col. 5, lines 45-50 of WILDE discloses that the sensor 130 is "[a] parts back-up sensor" which is "located on discharge section 18". The disclosed sensor 130 merely detects "the back-up of parts at the discharge end 75." This is not a fill capacity sensor, as recited in the claimed invention. Moreover, col. 6, lines 8-32 of WILDE discloses that the so-called sensor 156 is in fact merely an "[a]djustable limit switch" which, when contacted, shuts down the conveyor and lowers the conveyor support 14 "to a fully lower position (FIG. 3)."

In summary, the Examiner has simply not explained how the disclosed back-up sensor 130 and/or limit switch 156, which is not even arranged on the container support 14, is capable of detecting whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position and/or detecting when the container is full at the first tilt position in combination with indexing the container to an intermediate tilt position to enable settling of contents within the container and detecting when the container is full at the intermediate tilt position.

Examiner's Assertion

In rejecting dependent claims 2, 18 and 23 as obvious over WILDE in view of HERRIN, the Examiner acknowledged that WILDE fails to disclose or suggest the features of these claims, but noted that such features are taught in HERRIN.

Applicant's Response

Applicant respectfully disagrees. Neither WILDE nor HERRIN disclose or suggest the combination of features recited in at least independent claims 1, 17 and 21, from which these claims depend. As explained above, the sensors 130 and 156 of WILDE do not detect whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position.

HERRIN does not cure the deficiencies of WILDE. While the Examiner has identified sensors 66 and 67 of HERRIN as a sensor which determines whether any container is properly positioned, the Examiner has clearly failed to appreciate the fact that sensors 66 and 67 of HERRIN merely sense "the entering and exiting of containers C" through "the container holder" (see col. 6, lines 56-60). This is not the same as sensing the proper positioning of a container. Nor has the Examiner explained how the disclosed sensors 66 and 67 can possibly determine whether any variable sized mail

holding container is properly positioned within a bucket assembly. Applicant submits that none of the disclosed sensors (including sensors 66 and 67) of HERRIN have been shown by the Examiner to be capable of detecting whether the bucket assembly has reached a fill capacity at each of the recited positions.

Examiner's Assertion

The Examiner explains that col. 6, lines 46-60 of HERRIN teaches detecting whether a container is properly positioned.

Applicant's Response

Applicant respectfully disagrees. Col. 6, lines 46-60 of HERRIN merely discloses the following:

> A container contents unloading apparatus 20 according to the present invention preferably also includes time and position controlling means 60 operatively connected to the lifting means 50 and the holding means 45 for controlling the time and position of the lifting means 50 and the holding means 45 (see FIGS. 2 and 7-8). The time and position controlling means 60 preferably includes a time and position controller 61 and at least one optical motion controller 63 connected to the container contents discharging means 40 and responsive to the time and position controller 61. Position sensors, e.g., optical sensors or detectors 66, 67 can also be positioned adjacent the respective upstream and downstream ends of the container holder 45 and be connected to the time and position controller 61 for sensing the entering and exiting of containers C therethrough (emphasis added).

A sensor which senses entering and exiting of containers does not *per se* detect whether a container is properly positioned, and the Examiner has not shown otherwise.

CONCLUSION

Reconsideration of the Final Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,
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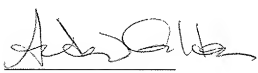

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